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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,959	07/03/2003	Nevin P. Carr	P23870	3558
7055	7590	09/24/2004	EXAMINER	
GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			YEAGLEY, DANIEL S	
			ART UNIT	PAPER NUMBER
			3611	

DATE MAILED: 09/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/611,959

Applicant(s)


CARR ET AL.

Examiner

Daniel Yeagley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 1-8, 16, 17, 25, 26, 30 and 35-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-12, 14, 15, 18-24, 27-29 and 31-34 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/3/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Applicant's election with traverse of Species III; subspecies IX is acknowledged. The traversal is on the ground(s) that a search of the different embodiments would not be a serious burden because the claims are coextensive or at least significantly overlap since all the claims are directed to at least a driving mechanism for an occupant propelled vehicle. This is not found persuasive because the multitude of different embodiments creates a significant burden on the office because the search for the numerous different embodiments of the drive mechanism and the crank arm return systems would extend over at least a number of classes and an even greater number of subclasses. Therefore the requirement is still deemed proper and is made FINAL.

2. Applicant response to the election requirement stating that claims 1 - 6, 9 - 15, 18 - 24 and 28 - 34 read on the elected species and subspecies is contested; the examiner upon thorough review of the elected claims has concluded that claims 1 - 6 and 30 do not read on the elected subspecies, but non-elected claim 27 is readable thereon. Therefore, the following claims have been examined on their merits as being drawn to the elected species III and subspecies IX; claims 9 - 15, 18 - 24, 27 - 29 and 31 - 34. Hence claims 1 - 8, 16, 17, 25, 26, 30 and 35 - 39 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a non-elected species, there being no allowable generic or linking claim.

Specification

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Objections

4. Claim 23 is objected to because of the following informalities: the terms “said rear stop”, “said front stop” and “said stationary stop” all lack proper antecedent basis because the stops were cited in dependent claim 10. Appropriate corrections are required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claims 9, 18, 21, 27 – 29 and 31 are rejected under 35 U.S.C. 102(a) as being anticipated by Lai ‘400

Lai shows an occupant propelled vehicle (figure 5) comprising a platform L between a front and rear portion of a frame, a front wheel and steering mechanism provided on the front portion of the frame and a rear wheel D provided on the rear portion of the frame, a drive mechanism comprising a drive gear (sector gear 311) and axle (figure 1) rotatable with the drive gear and mounted to the frame (figure 3) which oscillates over an arc of between 90 –100 degrees, a pedal crank arm 31 having a telescoping linear member is provided on the drive gear with a pedal shown attached to a second end of the crank arm such that downward force on the pedal and crank arm rotate the drive gear and drives a driven gear B which is mounted coaxial with the rear wheel and driving connected to the forwardly positioned drive gear with an intermediate gear A drivingly provided between the drive gear and the driven gear.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lai '400 in view of Peake '980.

Lai as stated above discloses an occupant propelled vehicle comprising a drive mechanism with a drive gear mounted to the frame in a position forward the driven gear but failed to show the drive gear positioned above the driven gear or position rearward the driven gear.

Peake shows an occupant propelled vehicle having a drive mechanism with a driven gear 25 and a drive gear 18 mounted to the frame, which shows the prior art of positioning the drive gear in a position above the driven gear and being rearward the driven gear as broadly claimed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the drive mechanism of Lai with a drive gear positioned in an alternative position to drive the driven gear such as suggested by the drive mechanism of Peake, and would have been an obvious matter of design choice to have positioned the drive gear in some alternative position such as above or rearward the driven gear as shown by Peake, since applicant has not disclosed that positioning the drive gear above or rearward the driven gear solves any stated problem or is for any particular purpose and it appears the invention would perform equally well with the drive gear in the forward position like that of Lai.

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9. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lai '400 in view of McConnel '898.

Lai as stated above discloses an occupant propelled vehicle comprising a drive mechanism having a linear pedal crank arm provided on the drive gear but lacked the crank arm being an angled member.

McConnel shows an occupant propelled vehicle having a drive mechanism with a pedal crank arm 16,19 having a pedal 18 at a second end of the crank arm, wherein the crank arm of McConnel is shown having an angle member as broadly claimed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the crank arm of Lai with an alternative cantilevered drive mechanism having an angled member such as shown by McConnel and would have been an obvious matter of design choice to have utilized an angle crank arm like that shown by McConnel as an alternative linear crank arm, since applicant has not disclosed that any type crank arm solves any stated problem or is for any particular purpose and it appears the invention would perform equally well with a linear crank like that of Lai.

10. Claims 10 – 12, 14, 15, 23, 24 and 32 – 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lai '400 in view of Stocks '878.

Lai discloses an occupant propelled vehicle as stated above, having a drive mechanism and pedal crank arm with a first end provided on the drive gear having a spring return means and includes inherent stops to prevent full rotation of the drive gear, wherein a stationary stop provide on the rear portion of the frame {slot L1 in platform}) and front and rear stops {front and rear edge of crank arm} prevent full rotation of the drive gear but failed to disclose a front and

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rear stop provided on the drive gear and an extension spring means.

Stocks shows an occupant propelled vehicle having a drive mechanism and pedal crank arm provided on a drive gear D which includes an extension spring means E that incorporates the art of providing a first end pivotally mounted to the frame and a second end connected to and movable with the drive gear, and further shows a stop means which includes a stationary stop {circumferential edge of driven gear c} which is provided on a rear portion of the frame and wherein drive gear D includes a front stop {upper side of drive gear} such that the extension spring rotates the drive gear in an opposite direction until the front stop abuts the stationary stop and a rear stop {lower side of drive gear} which abuts the stationary stop in a direction when downward force rotates the pedal in the other direction and is considered readable as being provided on a side of the drive gear being positioned in a range of between 90 – 100 degrees apart or positioned 220 degrees apart as broadly read.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the crank arm drive means of Lai with an alternative crank arm drive means incorporating an alternative drive gear and return spring means which utilizing an extension spring return device and a drive gear and stop means such as shown by Stocks as a simple alternative drive mechanism which still allows oscillation through an arc between 90-10 degrees as taught by Stocks and would have been an obvious matter of design choice to have utilized an alternative crank arm drive means such like that shown by Stocks as an alternative drive mechanism, since the applicant has not disclosed that any type drive means solves any stated problem or is for any particular purpose and it appears the invention would perform equally well with a drive mechanism like that of Lai.

Allowable Subject Matter

11. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Washizawa et al '029, Fan '102, Christensen et al '159, Langen '979 and Carr 682 show an occupant-propelled vehicle with an oscillating drive mechanism.

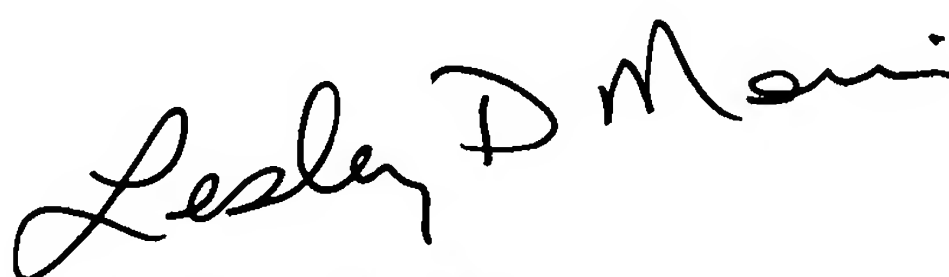
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Yeagley whose telephone number is 703-305-0838. The examiner can normally be reached on Mon. - Fri; first Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley D Morris can be reached on 703-308-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D.Y.
September 20, 2004


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